



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/168987

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on October 20, 2015.

The issue for determination is whether an MA overpayment was caused by client error.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. The petitioner applied for medical assistance on March 30, 2014. Exhibit 3.
3. The Centralized Document Processing Unit notified the petitioner on April 17, 2014, that he must verify his income by April 29, 2014. Exhibit 4.

4. The petitioner's employer completed an Employer Verification of Earnings Form, and submitted that on April 29, 2014, via facsimile, at 9:40 AM. Exhibit 5.
5. The respondent issued a denial letter to petitioner on April 30, 2015, indicating that petitioner's application was denied due to failure to provide the requested verification and because his income was over the MA program limit. Exhibit 7.
6. The agency subsequently approved the MA application and informed the petitioner of the approval on May 1, 2014. Exhibit 8.
7. The petitioner was unaware that his benefits had been approved because he did not receive the notice indicating this.
8. The county agency seeks to recover \$861.75 in BadgerCare Plus benefits provided to the petitioner from December 1, 2014, through April 30, 2015. Exhibit 9.

### DISCUSSION

The county agency seeks to recover \$861.75 from the petitioner for an alleged overpayment of BadgerCare Plus benefits provided to him from December 1, 2014, through April 30, 2015, because it contends that he failed to report income that affected his benefits.

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. All medical assistance recipients must report changes to the agency within 10 days. Wis. Admin. Code, § DHS § 104.02(6). Those receiving BadgerCare Plus had to report significant changes in income and new employment.

*BadgerCare Plus Eligibility Handbook*, § 27.3.

The petitioner applied for MA on March 30, 2014. He was denied for April benefits, but subsequently approved for on-going benefits in May, 2014. The respondent contends that petitioner's employment with [REDACTED] should have been reported by November 10, 2014, but was not; had it been timely reported, the petitioner would not have been eligible for MA benefits during the overpayment period. The petitioner contends that he never knew that he had been approved for MA coverage. Nevertheless, throughout the overpayment period, the BadgerCare Plus program made capitation payments for his

benefits, even though he were now over the program's income limit. The petitioner does not dispute the agency's calculation of the overpayment, but instead asserts no error on his part. The respondent agency ended the petitioner's eligibility when he did not complete his annual renewal.

The petitioner's contention that he did not know that he was eligible is credible because nothing in the records indicates that he ever used the MA benefits. In fact, the petitioner reported paying \$2,000 in dental bills during this time period, since he did not know that he had MA coverage. Although he did not seem to realize that he had the benefits, I am somewhat skeptical that they did not receive either the approval notice or the renewal notice. Still, mail does get lost or sent to the wrong address, and petitioner testified credibly that he did not receive the notices. I will accept his word. The overpayment rules found in Wis. Stat. § 49.497(1) do not clearly address this situation, but taken together the rules generally require some fault on the part of the recipient. In addition, the statute states that the agency "may" recover the overpayment, a term that generally means that the action is permissive rather than mandatory. The petitioner had no reason to report a change when he did not realize he was eligible. Based upon this, I find that the petitioner is not responsible for repaying the overpayment.

### **CONCLUSIONS OF LAW**

The petitioner is not responsible for repaying an overpayment of BadgerCare Plus that occurred from December 1, 2014, through April 30, 2015.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the county agency with instructions that, within 10 days of the date of this decision, it end its attempt to recover from petitioner medical assistance overpayment claim no. 2900441762, in the amount of \$861.75.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of December, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 7, 2015.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability